IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated: Nainital The 3rd April, 2006
Bail Application No. 215 of 2006

Order on the bail application of accused

CRIMINAL SIDE

Vivek Yadav
S/o Daya Ram Yadav
R/o Nahar Khera, Tehsil Mundawar,
District-Alwar, Rajasthan
At present: Teacher, Kendriya Vidyalaya, Srinagar
Pauri Garhwal (Uttaranchal) ….Applicant

Versus

State of Uttaranchal ….Opposite Party

In Case Crime No. 785 of 2005
U/s 306 I.P.C.
Police Station-Srinagar, Pauri Gahrwal
District-Pauri Garhwal, Uttaranchal

Hon'ble J.C.S. Rawat, J.

Heard Sri Alok Singh- Sr. Advocate, learned counsel for the applicant, learned AGA for the State and perused the record.

It was contended that the deceased was doing matriculation from the Central School where the accused-applicant is a teacher. The decease was the student of Class 11th. It is alleged that Mr. B.K. Nautiyal who was one of the teacher came to meet the teachers of the Central School who were the examiner and asked them to award less marks to the deceased. It is also alleged that Mr. Vivek Yadav and B.K. Nautiyal made harassment, humiliation and scolding to the girl and ultimately the girl committed the suicide. The suicide note had also been written by the deceased in which she has narrated the harassment and humiliation which has been made to her. It is pertinent to mention here that Mr. B.K. Nautiyal has been granted bail by the trial court and the State has not challenged the said order before the court. The allegation made against Mr. B.K. Nautiyal and Mr. Vivek Yadav are of similar nature. It was further contended that Mr. Vivek Yadav alongwith Mr. B.K. Nautiyal harassed the deceased and it was further contended that mere harassment does not come within the definition of abetment u/s 107 I.P.C.

Learned counsel for the applicant also relied upon the decision of **2004(2) U.D. 211 211 Smt. Suman Lata and another Vs. State and another (para 14)** which is quoted hereunder:-

14. Before I advert further, at this stage, I may notice a few decisions of the Apex Court, relevant for the purpose of disposal of this case, the same is quoted below:-

"In Swamy Prahaladdas Vs. State of M.P. 1999 Supp (3) 438: 1995 SCC (Cri), 943 *the appellant was charged for an offence under Section 307 I.P.C. on the ground that the appellant during the quarrel is said to have remarked to the deceased "to go and die". This court was of the view that mere words uttered by the accused to the deceased "to go and die" were not even prima facie enough to instigate the deceased to commit suicide.*

In Mahendra Singh Vs. State of M.P. 1995(3) SCC 731 :1995 SCC (Cri) 1157 *the appellant was charged for an offence under Section 306 I.P.C. basically based upon the dying declaration of the deceased, which reads as under:*

"My mother-in-law and husband and sister-in-law (Husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra want to marry a second time. He has illicit connections with my sister-in law. Because of these reasons and being harassed I want to die by burning."

This court, considering the definition of "abetment" under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under section 306 is not sustainable merely on the allegation of harassments of the deceased. This court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

In ***Ramesh Kumar Vs State of Chattisgarh (2001) 9 SCC 618*** *the Apex court was considering the charge framed and the conviction for an offence u/s 306 I.PC. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused, the Court said:*

"A word uttered in a fit of anger or emotion without intending the consequence to actually follow cannot be said to be instigation. If he hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such similarity circumstanced individual in given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charge for abetting the offence of suicide should be found guilty."

Considering the facts and circumstance of the case in totality, it is a fit case for bail at this stage.

Let the accused-applicant, Vivek Yadav be released on bail on furnishing a personal bond and sureties each in the like amount to the satisfaction of the CJM concerned.

(J.C.S. Rawat, J.)

Dated 03.04.2006
Shiv